

Central Distributors, Inc. and Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Case 1-CA-19718

September 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on March 29, 1982, by Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Central Distributors, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1, issued a complaint on April 16, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on January 22, 1982, following a Board election in Case 1-RC-17384, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;¹ and that, commencing on or about September 11, 1981, January 22, 1982, February 26, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On April 27, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 9, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on July 15, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary

Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits its refusal to bargain but challenges the Union's certification on the basis that the Board erred in certifying the Union as the exclusive bargaining representative of Respondent's employees. In the Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues previously considered in the underlying representation case, and, also, that no factual issues which warrant a hearing are presented in this case.

Our review of the record herein, including the record in Case 1-RC-17384, discloses, *inter alia*, that pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted among the employees of the stipulated unit on September 11, 1981, and that the tally of ballots furnished the parties showed eight votes cast for and seven votes cast against the Union. There were no challenged ballots. On September 18, 1981, Respondent filed timely objections to conduct affecting the election that an employee, Gerald Whalen, was deprived of his lawful right to vote in the election. As the voting results were close, Whalen's vote could have affected the outcome, and, accordingly, Respondent sought to have the election rerun.

On October 19, 1981, the Regional Director issued his report in which he overruled Respondent's objections. The Regional Director found that, although an election may be rerun where an employee is unable to vote due to a job-related absence, in this case, the employee, Gerald Whalen, died subsequently on October 4 and under such circumstances rerunning the election was not appropriate.

On October 30, 1981, Respondent filed exceptions to the Regional Director's report reiterating its contention that the postelection death of Whalen should not be considered in determining whether the election should be rerun. On January 22, 1982, the Board issued its Decision affirming the Regional Director's report and certifying the Union as the exclusive bargaining representative of

¹ Official notice is taken of the record in the representation proceeding, Case 1-RC-17384, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

the employees (not published in bound volumes of Board Decisions.)

On January 26, 1982, the Union requested, by letter, that Respondent bargain collectively with it. On February 26, 1982, Respondent, by letter, refused to bargain with the Union. In its answer to the complaint, Respondent admits that it has refused to bargain with the Union because it denies the validity of the certification of the Union.

In its response to the General Counsel's Motion for Summary Judgment, Respondent asserts that it does not contest the Board's granting of the General Counsel's motion to the extent that said motion is granted on the basis that Respondent denies the validity of the Union's certification for the reasons set forth in Respondent's objections filed in the underlying representation proceeding. It is therefore clear all issues raised by Respondent in this proceeding were litigated in the prior representation proceeding, and Respondent does not attempt to relitigate those issues, in this proceeding. Instead, it seeks court review of the Union's certification. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Maine corporation, whose principal place of business is at 70 Commercial Street, Lewiston, Maine, is engaged at that location in the wholesale distribution and sale of wine, beer, and related products. In the course and conduct of Respondent's business, it purchases and receives at its Lewiston, Maine, location goods and materials valued in excess of \$50,000 directly from points located outside the State of Maine. Annually, Respondent ships goods valued in excess of \$50,000 from its Lewiston location directly to points located outside the State of Maine.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, warehousemen, wine packers, forklift driver and mechanic employed by the Respondent at its Lewiston, Maine location but excluding all office clerical employees, guards and all supervisors as defined in the Act.

2. The certification

On September 11, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on January 22, 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 11, 1981, January 22, 1982, January 26, 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 11, 1982, January 22, 1982, February 26, 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 11, 1982, January 22, 1982, February 26, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Central Distributors, Inc., set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Central Distributors, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time drivers, warehousemen, wine packers, forklift driver and mechanic employed by the Respondent at its Lewiston, Maine, location but excluding all office clerical employees, guards and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 22, 1982, the above-named labor organization has been and now is the certified and

exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 11, 1982, January 22, 1982, February 26, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Central Distributors, Inc., Lewiston, Maine, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time drivers, warehousemen, wine packers, forklift driver and mechanic employed by the Respondent at its Lewiston, Maine location but excluding all office clerical employees, guards and all supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit

with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at 70 Commercial Street, Lewiston, Maine, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Truck Drivers, Warehousemen & Helpers Union Local No. 340, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time drivers, warehousemen, wine packers, forklift driver and mechanic employed by the Employer at its Lewiston, Maine location but excluding all office clerical employees, guards and all supervisors as defined in the Act.

CENTRAL DISTRIBUTORS, INC.